

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

No. 19-cr-20833

Plaintiff,

HON. ROBERT H. CLELAND

v.

D-1 Elizabeth Prohitt, CRNA,

Offenses: Counts 1-5

21 U.S.C. § 843(a)(3)

Defendant.

Obtaining Controlled Substances by
Misrepresentation, Fraud, Forgery,
Deception, or Subterfuge.

_____ /

Rule 11 Plea Agreement

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant Elizabeth Prohitt, CRNA and the government agree as follows:

1. Guilty Plea

A. Count(s) of Conviction

Defendant will enter a plea of guilty to Counts One through Five of the Indictment, which each charge her with obtaining controlled substances by fraud, in violation of 21 U.S.C. § 843(a)(3).

B. Elements of Offense(s)

The elements of Counts One through Five are as follows:

- 1) Obtain a possession of a controlled substance;
- 2) By misrepresentation, fraud, forgery, deception, or subterfuge.

C. Factual Basis for Guilty Plea

The following facts are a sufficient and accurate basis for defendant's guilty plea(s):

From at least on or about July 1, 2018, and continuing through on or about February 12, 2019, in the Eastern District of Michigan, the defendant, Elizabeth Prophitt, CRNA, obtained Schedule II and Schedule IV controlled substances by retrieving vials of controlled substance medications from hospital dispensing machines at the Veterans Administration Ann Arbor Healthcare System. Prophitt, a Certified Register Nurse Anesthetist, used protected patient information to obtain these controlled substances for the purported use on patients. However, the purpose of obtaining these controlled substances was not for the legitimate treatment of patients, but rather for personal consumption and/or drug diversion.

In total, the defendant, obtained more than 2,200 vials of Schedule II and Schedule IV controlled substances.

2. Sentencing Guidelines

A. Standard of Proof

The Court will find sentencing factors by a preponderance of the evidence.

B. Agreed Guideline Range

There are no sentencing guideline disputes. Except as provided below, Defendant's guideline range is **0 - 6 months**, as set forth on the attached worksheets. If the Court finds:

1. That defendant's criminal history category is higher than reflected on the attached worksheets, or
2. that the offense level should be higher because, after pleading guilty, defendant made any false statement to or withheld information from his probation officer; otherwise demonstrated a lack of acceptance of responsibility for his offense; or obstructed justice or committed any crime,

and if any such finding results in a guideline range higher than **0 - 6 months**, the higher guideline range becomes the **agreed range**. However, if the Court finds that defendant is a career offender, an armed career criminal, or a repeat and dangerous sex offender as defined under the sentencing guidelines or other federal law, and that finding is not already reflected in the attached worksheets, this paragraph does not authorize a corresponding increase in the agreed range.

Neither party may take a position concerning the applicable guidelines that is different from any position of that party as reflected in the attached worksheets,

except as necessary to the Court's determination regarding subsections 1) and 2), above.

C. Relevant Conduct

Defendant acknowledges and agrees that the relevant conduct in this case, includes her obtaining more than 2,200 vials of Schedule II and Schedule IV controlled substances by fraud, deception, and misrepresentation.

3. Sentence

The Court will impose a sentence pursuant to 18 U.S.C. § 3553, and in doing so must consider the sentencing guideline range.

A. Imprisonment

Pursuant to Rule 11(c)(1)(B), the government makes a non-binding recommendation that the sentence of imprisonment be no more than the top of the sentencing guideline range as determined by Paragraph 2B.

B. Supervised Release

A term of supervised release, if imposed, follows the term of imprisonment. The defendant agrees that the Court shall impose a supervised release term of five (5) years. Defendant agrees that the Court shall order her not to work in a medical facility where she has access to controlled substances, in any capacity during the time period for which she is on Supervised Release. The agreement concerning

imprisonment described above in Paragraph 3A does not apply to any term of imprisonment that results from any later revocation of supervised release.

C. Special Assessment

Defendant will pay a special assessment of \$500.00

D. Fines

There is no agreement as to fines.

E. Restitution

The Court shall order restitution to every identifiable victim of defendant's offenses. The victim and the full amount of restitution in this case is as follows:

- \$1,482.90 to United States Department of Veterans Affairs.

4. Use of Withdrawn Guilty Plea

If the Court allows defendant to withdraw her guilty plea for a "fair and just reason" pursuant to Fed. R. Crim. P. 11(d)(2)(B), defendant waives her rights under Fed. R. Evid. 410, and the government may use her guilty plea, any statement made under oath at the change-of-plea hearing, and the factual basis statement in this plea agreement, against her in any proceeding.

5. Each Party's Right to Withdraw from This Agreement

The government may withdraw from this agreement if the Court finds the correct guideline range to be different than is determined by Paragraph 2B.

Defendant may withdraw from this agreement, and may withdraw her guilty plea, if the Court decides to impose a sentence higher than the maximum allowed by Paragraph 3. This is the only reason for which defendant may withdraw from this agreement. The Court shall advise defendant that if she does not withdraw her guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Paragraph 3.

6. Appeal Waiver

Defendant waives any right she may have to appeal her conviction on any grounds. If the sentence imposed does not exceed the maximum allowed by Part 3 of this agreement, Defendant also waives any right she may have to appeal her sentence. If the sentence imposed is within the guidelines determined by Paragraphs 2B, the government agrees not to appeal the sentence, but retains its right to appeal any sentence below that range. This waiver shall not be construed to bar a claim by the Defendant of ineffective assistance of counsel.

7. Other Charges

If the Court accepts this agreement, the government will dismiss all remaining charges against Defendant in this case as set forth in the Indictment.

8. Consequences of Withdrawal of Guilty Plea(s) or Vacation of Conviction(s)

If defendant is allowed to withdraw her guilty plea(s) or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's

request, reinstate any charges that were dismissed as part of this agreement. If additional charges are filed against defendant within six months after the date the order vacating defendant's conviction or allowing her to withdraw her guilty plea(s) becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea(s) or to any conduct reflected in the attached worksheets, defendant waives her right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

9. Collateral Consequences of Conviction

Defendant understands that her conviction(s) here may carry additional consequences under federal and state law, including the potential loss of the right to vote, right to carry a firearm, right to serve on a jury, and ability to hold certain licenses or to be employed in certain fields. Defendant further understands that, if she is not a native-born citizen of the United States, there may be adverse immigration consequences resulting from conviction. These include possible removal from the United States, denial of citizenship, denaturalization, denied admission to the United States in the future and other possible consequences. Defendant understands that no one, including the defendant's attorney or the Court, can predict to a certainty the effect of defendant's conviction on any of these matters. Defendant nevertheless affirms that she chooses to plead guilty regardless

of any immigration consequences or other collateral consequences of her conviction.

10. Parties to Plea Agreement

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan.

11. Scope of Plea Agreement

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for the defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

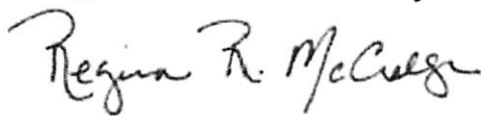
Notwithstanding the previous paragraph, if defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.

This agreement also does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

12. Acceptance of Agreement by Defendant

The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.

SAIMA S. MOHSIN
Acting United States Attorney



Regina R. McCullough
Assistant United States Attorney
Chief, Health Care Fraud



Brandy R. McMillion
Assistant United States Attorney

Date: July 8, 2021

By signing below, defendant acknowledges that she has read (or been read) this entire document, understands it, and agrees to its terms. She also acknowledges that she is satisfied with her attorney's advice and representation. Defendant agrees that she has had a full and complete opportunity to confer with her lawyer, and has had all of her questions answered by her lawyer.



David A. Shand
Attorney for Defendant

July 8, 2021
Date



Elizabeth Prophitt, CRNA
Defendant

July 8th, 2021
Date

WORKSHEET A

OFFENSE LEVEL

Defendant Elizabeth ProhittDistrict/Office Eastern District of MichiganDocket Number 19-20833

Count Number(s) _____

U.S. Code Title & Section 21 : 843(a)(3) ; _____Guidelines Manual Edition Used: 2018 (Note: The Worksheets are keyed to the November 1, 2016 Guidelines Manual)

INSTRUCTIONS

Complete a separate Worksheet A for each count of conviction or as required in a situation listed at the bottom of Worksheet B.*
Exceptions: Use only a single Worksheet A where the offense level for a group of closely related counts is based primarily on aggregate value or quantity (see §3D1.2(d)) or where a count of conspiracy, solicitation, or attempt is grouped with a substantive count that was the sole object of the conspiracy, solicitation, or attempt (see §3D1.2(a) & (b)).

1. Offense Level (See Chapter Two)

Enter the applicable base offense level and any specific offense characteristics from Chapter Two and explain the bases for these determinations. Enter the sum in the box provided.

Guideline	Description	Level
§ 2D2.2	Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge	8
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

If the Chapter Two guideline requires application of a cross reference or other reference, an additional Worksheet A may be needed for that analysis. See §1B1.5.

Sum 8

2. Victim-Related Adjustments (See Chapter Three, Part A)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0".

§ _____ 0

3. Role in the Offense Adjustments (See Chapter Three, Part B)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If the adjustment reduces the offense level, enter a minus (-) sign in front of the adjustment. If no adjustment is applicable, enter "0".

§ 3B1.3 2

4. Obstruction Adjustments (See Chapter Three, Part C)

Enter the applicable section and adjustment. If more than one section is applicable, list each section and enter the combined adjustment. If no adjustment is applicable, enter "0".

§ _____ 0

5. Adjusted Offense Level

Enter the sum of Items 1–4. If this Worksheet A does not cover all counts of conviction or situations listed at the bottom of Worksheet B, complete Worksheet B. Otherwise, enter this result on Worksheet D, Item 1.

10

Check here if all counts (including situations listed at the bottom of Worksheet B)* are addressed on this one Worksheet A. If so, no Worksheet B is used.



If the defendant has no criminal history, enter "I" here and on Worksheet D, Item 4. No Worksheet C is used.

WORKSHEET D**DETERMINING THE SENTENCE**

[Page 1 of 4]

Defendant Elizabeth ProphittDocket Number 19-20833**1. Adjusted Offense Level** (From Worksheet A or B)

If Worksheet B is required, enter the result from Worksheet B, Item 9. Otherwise, enter the result from Worksheet A, Item 5.

10**2. Acceptance of Responsibility** (See Chapter Three, Part E)

Enter the applicable reduction of 2 or 3 levels. If no adjustment is applicable, enter "0".

- 2**3. Offense Level Total** (Item 1 less Item 2)**8****4. Criminal History Category** (From Worksheet A or C)

Enter the result from Worksheet C, Item 8, unless the defendant has no criminal history, and as directed at the bottom of Worksheet A, no Worksheet C is used and "T" is entered here.

1**5. Terrorism; Career Offender; Criminal Livelihood; Armed Career Criminal; Repeat and Dangerous Sex Offender** (See Chapter Three, Part A, and Chapter Four, Part B)**a. Offense Level Total**

If the provision for Career Offender (§4B1.1), Criminal Livelihood (§4B1.3), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in an offense level total higher than Item 3, enter the offense level total. Otherwise, enter "N/A".

b. Criminal History Category

If the provision for Terrorism (§3A1.4), Career Offender (§4B1.1), Armed Career Criminal (§4B1.4), or Repeat and Dangerous Sex Offender (§4B1.5) results in a criminal history category higher than Item 4, enter the applicable criminal history category. Otherwise, enter "N/A".

6. Guideline Range from Sentencing Table

Enter the applicable guideline range from Chapter Five, Part A, in months.

0 to 6**7. Restricted Guideline Range** (See Chapter Five, Part G)

If the statutorily authorized maximum sentence or the statutorily required minimum sentence restricts the guideline range (Item 6) (see §§5G1.1 and 5G1.2), enter either the restricted guideline range or any statutory maximum or minimum penalty that would modify the guideline range. Otherwise, enter "N/A".

to☐

Check here if §5C1.2 (Limitation on Applicability of Statutory Minimum Penalties in Certain Cases) and 18 U.S.C. § 3553(e) – "The Safety Valve" – are applicable.

8. Undischarged Term of Imprisonment; Anticipated State Term of Imprisonment (See §5G1.3)☐

If the defendant is subject to an undischarged term of imprisonment, or an anticipated state term of imprisonment, check this box. Below list the undischarged/anticipated term(s), the applicable section of §5G1.3 and its direction or guidance as to whether the instant federal sentence is to be imposed to run concurrently or consecutively to the undischarged/anticipated term(s), and any sentence adjustment.

Worksheet D — Determining the Sentence [Page 2 of 4]Defendant Elizabeth ProhittDocket Number 19-20833**9. Sentencing Options** (See Chapter Five, Sentencing Table and §§5B1.1(a) and 5C1.1)

Check the applicable box that corresponds to the Guideline Range entered in Item 6 or Item 7, if applicable.

Zone A (See §§5B1.1(a)(1) & 5C1.1(a) & (b))

If checked, the following options are available:

- Fine (See §§5C1.1(b) & 5E1.2(a))
- “Straight” Probation (See §§5B1.1(a)(1) & 5C1.1(b))
- Imprisonment (See §5C1.1(a) & (c)(1))

Zone B (See §§5B1.1(a)(2) & 5C1.1(a) & (c))If checked, *the minimum term may be satisfied by:*

- Imprisonment (See §5C1.1(a) & (c)(2))
- Imprisonment of **at least one month plus supervised release** with a condition that substitutes community confinement or home detention for imprisonment (See §5C1.1(c)(2))
- Probation with a condition that substitutes intermittent confinement, community confinement, or home detention for imprisonment (See §§5B1.1(a)(2) and 5C1.1(c)(3))

Zone C (See §5C1.1(a) & (d))If checked, *the minimum term may be satisfied by:*

- Imprisonment (See §5C1.1(a) & (d)(1))
- Imprisonment of **at least one-half of the minimum term plus supervised release** with a condition that substitutes community confinement or home detention for imprisonment (See §5C1.1(d)(2))

Zone D (See §5C1.1(a) & (f))If checked, *the minimum term is to be satisfied by a sentence of imprisonment***10. Length of Term of Probation** (See §5B1.2)

If probation is imposed, the guideline for the length of such term of probation is: (Check the applicable box)



At least one year, but not more than five years if the offense level total is 6 or greater.



No more than three years if the offense level total is 5 or less.

Worksheet D — Determining the Sentence [Page 3 of 4]Defendant Elizabeth ProhittDocket Number 19-20833**11. Supervised Release** (See §§ 5D1.1 and 5D1.2)**a. Imposition of a Term of Supervised Release:**☐

Ordered because required by statute (See § 5D1.1(a)(1)).

☐

Ordered because a sentence of imprisonment of more than one year is imposed (See § 5D1.1(a)(2)).

☐Is **not** ordered although a sentence of more than one year is imposed, because it is not required by statute **and** the defendant likely will be deported after imprisonment (See § 5D1.1(c)).☒

Ordered because it may be ordered in any other case (See § 5D1.1(b)).

b. Length of Term of Supervised Release

Check the Class of the Offense:

☐

Class A or B Felony: Two to Five Year Term (See § 5D1.2(a)(1))

☐

Class C or D Felony: One to Three Year Term (See § 5D1.2(a)(2))

☒

Class E Felony or Class A Misdemeanor: One Year Term (See § 5D1.2(a)(3))

☐

If a statutorily required mandatory minimum term of supervised release for the offense impacts the guideline range for the applicable Class of Offense above, also check this box, and list the statutory minimum term (See § 5D1.2(c)):

_____ years mandatory minimum term of supervised release

☐

If an offense in 18 U.S.C. § 2332b(g)(5)(B) that resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; or if a sex offense, the term of supervised release will not be less than the minimum term established above, and may be up to life (See § 5D1.2(b)).

Policy Statement: If a sex offense, the *statutory maximum term* of supervised release is recommended.**12. Restitution** (See § 5E1.1)

- a. If restitution is applicable, enter the amount. Otherwise enter "N/A" and the reason:

\$1,482.90 to United States Department of Veterans Affairs

- b. Enter whether restitution is statutorily mandatory or discretionary:

- c. Enter whether restitution is by an order of restitution, or
- solely**
- as a condition of supervision. Enter the authorizing statute:

Worksheet D — Determining the Sentence [Page 4 of 4]Defendant Elizabeth ProhittDocket Number 19-20833**13. Fines (The Guideline Range for Fines for Individual Defendants) (See §5E1.2)****a. Special Fine Provisions**

Minimum

Maximum



Check box if any of the counts of conviction is for a statute with a special fine provision. (This **does not** include the general fine provisions of 18 USC § 3571(b)(2) & (d)).

Enter the sum of statutory maximum fines for all such counts.

\$ 250,000

b. Fine Table (§5E1.2(c)(3))

Enter the minimum and maximum fines.

\$ 2,000

\$ 20,000

c. Fine Guideline Range

(Determined by the minimum of the Fine Table (Item 13(b)) and the greater maximum above (Item 13(a) or 13(b)).

\$ 2,000

\$ 250,000

d. Ability to Pay

Check this box if the defendant does not have an ability to pay.

14. Special Assessments for Individual Defendants (See §5E1.3)

Enter the total amount of the statutory special assessments required for all counts of conviction:

- \$100 for each felony count of conviction.
- \$25 for each Class A misdemeanor count of conviction.
- While not subject to guideline sentencing, the special assessments for a Class B misdemeanor, and a Class C misdemeanor or infraction are \$10 and \$5 per count, respectively.

TOTAL:

\$ 500

15. Factors That May Warrant a Departure (See §1B1.1(b))

Consider Chapter Five, Part H (Specific Offender Characteristics) and Part K (Departures), and other policy statements and commentary in the *Guidelines Manual* that might warrant consideration in sentencing. (See also the "List of Departure Provisions" included in the *Guidelines Manual* after the Index).

16. Factors That May Warrant a Variance (See §1B1.1(c))

Consider the applicable factors in 18 U.S.C. § 3553(a) taken as a whole.

Completed by AUSA Brandy R. McMillionDate 7/8/21